

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:99cr20

UNITED STATES OF AMERICA)
)
)
v.) ORDER
)
)
ROBERT FERDINAND ANNEHEIM,)
Defendant.)
)
_____)

THIS MATTER is before the court on remand from the Fourth Circuit Court of Appeals.

In the unpublished opinion of United States v. Anneheim, No. 09-6529 (4th Cir. 2009), the Fourth Circuit asked this court to determine whether Anneheim's Notice of Appeal, filed more than ten days after the entry of the order being appealed, is eligible for an extension of time pursuant to FED. R. APP. P. 4(b)(4).

Rule 4(b)(1)(A) requires that a defendant in a criminal case file a notice of appeal in the district court "within 10 days after the later of: (i) the entry of either the judgment or the order being appealed; or (ii) the filing of the government's notice of appeal." FED. R. APP. P. 4(b)(1)(A). However, Rule 4(b)(4) permits the Court "[u]pon a finding of excusable neglect or good cause . . . – before or after the time has expired, with or without motion and notice – [to] extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b)." Other than as provided in this rule, the Court may not extend the time for filing a notice of appeal. *See United States v. Reyes*, 759 F.2d 351, 353 (4th Cir. 1985); United States v. Schuchardt, 685 F.2d 901, 902 (4th Cir. 1982).

In the present case, the order Defendant seeks to appeal was entered on March 4, 2009.

However, Defendant did not file his Notice of Appeal until sometime around March 18, 2009,¹ after the ten-day period had expired but within the thirty-day excusable neglect window. In his Notice of Appeal, Defendant stated that he was filing his Notice within ten days of receiving the relevant court order. Because Defendant timely filed his Notice of Appeal after becoming aware of the court's decision, the court finds that good cause exists for granting an extension of time pursuant to FED. R. APP. P. 4(b)(4).

IT IS, THEREFORE, ORDERED that Defendant's Notice of Appeal is deemed timely filed.

IT IS FURTHER ORDERED that the Deputy Clerk shall forward a copy of this Order to the Fourth Circuit Court of Appeals along with the record on appeal.

Signed: September 8, 2009



Richard L. Voorhees
United States District Judge



¹This is the date of the postmark on Defendant's Notice of Appeal.